be cut down merely because a certain Act, besides regulating, happens also to protect the morals or health of the community.

The cardinal objection, however, which is made to the principal case, is that the transaction was not "commerce." In defining this term Chief Justice Marshall has said that it is more than traffic, it is intercourse; and the cases have decided that it includes navigation, and the transportation of persons. *Gibbons* v. *Ogden*, 9 Wheat. (U. S. Sup. Ct.) 1; *Head Money Cases*, 112 U. S. 580. But both text-writers and courts have united in declaring that only when there is a prospective sale, barter, or exchange does the term include the transportation of property. See 2 STORY, CONST. § 1061, note; *Hooper* v. *Cal.*, 155 U. S. 648. It may well be doubted whether a broader definition will not eventually prevail. For, if to carry a person for hire is commerce — as it unquestionably is — the same should logically be true of the carriage of property for hire. The mere payment of compensation, irrespective of any sale or exchange, or of the status of the transporter as a common carrier, results in a commercial transaction. In the principal case, however, it was urged that as these tickets were not legally vendible in either California or Texas they were not subjects of commerce, and that they could not be made such merely through transportation by a carrier. To these arguments there are two valid replies: first, that traffic in forbidden articles does exist in fact, and therefore, as commerce is a question not of law but of fact, does constitute commerce; and second, that the existence of commerce is often determined not so much by the intrinsic nature of the thing carried as by the nature of the instrumentality of carriage. In accord with this view is a recent statement by the Supreme Court that "transportation for others, as an independent business, is commerce, irrespective of the purpose to sell or retain the goods which the owner may entertain. . . ." *Hanley* v. *Kansas, etc., Ry. Co.*, 23 Sup. Ct. Rep. 214. In this connection, however, it is imperative to note that a party who merely ships goods subject to interstate commerce does not thereby necessarily become engaged in interstate commerce. *Kidd* v. *Pearson*, 128 U. S. 1.

In fact, this distinction is really decisive of the principal case. Lottery companies are not engaged in interstate commerce, and are therefore subject to control by the state; lottery tickets when sent beyond the state are subjects of interstate commerce and therefore within the control of Congress. Technically the decision stands for this, and nothing more. Broadly it is another sign of the times. Taken with the rejuvenation of the Sherman Act by the Addyston Pipe Company case, the recent beef-trust decision, the energy of the government as exemplified by its prosecution of the Northern Securities Company, and the establishment of the Department of Commerce, it marks the tendency towards an obliteration of state lines and a centralization of power in the federal government.

FRAUD WITHOUT DAMAGE AS GROUND FOR RESCISSION. — In spite of the vast amount of judicial consideration of the subject of fraud, it has apparently remained for a recent case to raise the interesting question whether a suit for rescission on the ground of fraud may not be maintained although there is no damage to the plaintiff, when there is damage to a third party. The plaintiff had made an oral agreement with his neighbor not to sell his summer residence to anyone who would use it for an improper

purpose. To carry out this moral obligation, he refused to sell to the defendant. Thereupon the latter employed an agent, who, by fraudulently representing that his purchase was for an unobjectionable third person, obtained a deed, and conveyed over to the defendant. The plaintiff received his own price for the property, but in spite of the absence of damage to the plaintiff, the court set aside the deed. *Brett* v. *Cooney*, 53 Atl. Rep. 729 (Conn.).

It is well settled that if in this case conveyance had not yet been made, a court of equity would have refused the defendant specific performance. *Kelly* v. *Central Pac. R. R. Co.*, 74 Cal. 557. But a reason sufficient to justify such a refusal would not necessarily be sufficient to warrant affirmative relief as in the principal case. *Cadman* v. *Horner*, 18 Ves. 10. On the contrary, the law is usually stated to be that where the plaintiff has suffered no damage, affirmative relief will be given neither at law nor in equity. See 1 BIGELOW, FRAUD 540; see also *Mahoney* v. *Whyte*, 49 Ill. App. 97.

Where there has been no damage to anyone, it is admitted that no action of any kind can lie. A plaintiff cannot sue for damages, for he has suffered none. He cannot sue to rescind and set aside the deed, for equity will not move in an idle suit: substantial interests must be involved. But where there is damage to someone, the reason of the rule in this latter case is satisfied. Given a plaintiff defrauded, an equity affecting the conscience of the defendant, and a serious injustice to be corrected, it seems a decree should issue. The fact that the person protected is a third party should make no difference. The third party must of course be without a remedy of his own. Thus relief was refused in *Dawson* v. *Graham*, 48 Ia. 378, and in *Union Bank* v. *Osborne*, 4 Humph. (Tenn.) 413. But if he is helpless, every dictate of conscience would urge a court of equity to assist the defrauded plaintiff in his efforts to relieve him. The only possible objection to so equitable a result would be some contrary claim in the defendant; but he, certainly, neither has an absolute right to retain the results of his fraud, nor deserves any tenderness at the hands of the court.

On this reasoning the principal case is believed to be sound. No decision directly against it has been found. It is authority for the proposition that though there can be no action for fraud without damage, yet in cases of rescission the damage need not always be damage to the plaintiff.

INTERCHANGE OF MAJORITY STOCK BY CORPORATIONS TO SECURE TO EACH THE CONTROL OF THE OTHER. — The exceptionally liberal policy of New Jersey toward her own corporations having the power of holding stock in other corporations seems to have suffered a modification in a recent decision of the Court of Chancery in that state. The Prudential Insurance Company of America, a New Jersey corporation, has power to "purchase" stock in other corporations "for investment." A majority of its stock is owned by its directors, several of whom are also on the board of the Fidelity Trust Company, another New Jersey corporation. An agreement was entered into by the two boards by which the Fidelity Company was to double its capital stock and turn over the entire new issue to the Prudential Company, which already owned one-third of the original stock. At the same time the directors of the Prudential Company were to sell from their holdings in that company a majority of its stock to the Fidelity Company.